



*Town of*  
***North Stonington, Connecticut***

TOWN OF NORTH STONINGTON  
NOTICE OF SPECIAL TOWN MEETING – March 7, 2016  
NOTICE OF REFERENDUM – March 14, 2016

Warning is hereby given for a special town meeting of the electors and citizens qualified to vote in town meetings of the Town of North Stonington, Connecticut, to be held in the North Stonington Elementary School Multi-Purpose Room, at 311 Norwich Westerly Road in North Stonington on the 7<sup>th</sup> day, March, 2016 at 7:00 p.m. for the following purposes:

1. To hear and act upon the following: "Shall an ordinance be adopted concerning votes for the Office of First Selectman as follows: In accordance with CGS 9-188, votes cast for a candidate for First Selectman shall count for that office only. Votes cast for an unsuccessful candidate for First Selectman shall not be counted as votes for that candidate as a member of the Board of Selectman"?

(a) Pursuant to Section 7-7 of the General Statutes to adjourn said town meeting at its conclusion and to submit the aforesaid resolution to vote upon voting machines on the 14<sup>th</sup> day, March, 2016, between the hours of 6:00 AM and 8:00 PM Electors and persons qualified to vote in town meetings who are not electors shall vote the following polling place:

North Stonington Town Hall  
40 Main Street  
North Stonington

The aforesaid resolution will be placed on the voting machines under the following heading:

"SHALL AN ORDINANCE BE ADOPTED CONCERNING VOTES FOR THE OFFICE OF FIRST SELECTMAN AS FOLLOWS: IN ACCORDANCE WITH CGS 9-188, VOTES CAST FOR A CANDIDATE FOR FIRST SELECTMAN SHALL COUNT FOR THAT OFFICE ONLY. VOTES CAST FOR AN UNSUCCESSFUL CANDIDATE FOR FIRST SELECTMAN SHALL NOT BE COUNTED AS VOTES FOR THAT CANDIDATE AS A MEMBER OF THE BOARD OF SELECTMAN."?

Voters approving said resolution will vote "Yes" and those opposing said resolution will vote "No." Absentee ballots will be available from the Town Clerk's office.

2. To consider and vote upon a resolution,  
(a) to increase by \$2,254,000 the \$6,360,000 appropriation approved at referendum held July 29, 2013 for costs related to the design and construction of a new Emergency Services Complex and related improvements to be situated at 25 Rocky Hollow Road in North Stonington, for an aggregate appropriation of \$8,614,000; and that the Town increase by \$2,254,000 the \$6,360,000 authorization of bonds or notes and temporary notes approved at referendum held July 29, 2013 to finance the aforesaid appropriation, for an aggregate borrowing authorization of \$8,614,000. The amount of bonds or notes authorized to be issued to finance the appropriation

shall be reduced by the amount of grants received by the Town for the project. The appropriation may be spent for design and construction costs, including administrative costs, architects' fees, engineering fees, testing, survey, printing and advertising costs, equipment, materials, legal and other professional fees, net temporary interest and other financing costs, and other expenses related to the project and the financing thereof; and

(b) to declares the official intent of the Town under Federal Income Tax Regulation Section 1.150-2 that project costs may be paid from temporary advances of available funds and that the Town reasonably expects to reimburse any such advances from the proceeds of borrowings in an aggregate principal amount not in excess of the amount of borrowing authorized above for the project, and to authorize the First Selectman and the Treasurer are authorized to amend such declaration of official intent as they deem necessary or advisable and to bind the Town pursuant to such representations and covenants as they deem necessary or advisable in order to maintain the continued exemption from federal income taxation of interest on the bonds, notes or temporary notes authorized by this resolution, if issued on a tax-exempt basis, including covenants to pay rebates of investment earnings to the United States in future years.

(c) Pursuant to Section 7-7 of the General Statutes to adjourn said town meeting at its conclusion and to submit the aforesaid resolution to vote upon voting machines on the 14<sup>th</sup> day, March, 2016, between the hours of 6:00 AM and 8:00 PM Electors and persons qualified to vote in town meetings who are not electors shall vote the following polling place:

North Stonington Town Hall  
40 Main Street  
North Stonington

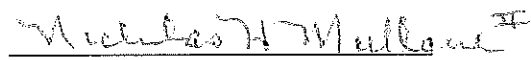
The aforesaid resolution will be placed on the voting machines under the following heading:


"SHALL THE TOWN OF NORTH STONINGTON INCREASE BY \$2,254,000 THE \$6,360,000 APPROPRIATION AND BORROWING AUTHORIZATION FOR DESIGN AND CONSTRUCTION OF A NEW EMERGENCY SERVICES COMPLEX TO BE SITUATED AT 25 ROCKY HOLLOW ROAD IN NORTH STONINGTON?"

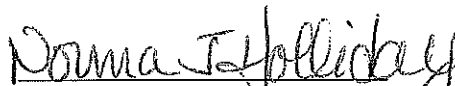
Voters approving said resolution will vote "Yes" and those opposing said resolution will vote "No." Absentee ballots will be available from the Town Clerk's office.

Dated at North Stonington, Connecticut, this 23rd day of February, 2016.

  
Shawn P. Murphy, First Selectman

  
Nicholas H. Mullane, II, Selectman

  
Mark S. Donahue, Selectman

  
Norma J. Holliday, Town Clerk

We the undersigned hereby petition the North Stonington Board of Selectmen to warn a Town meeting for the purpose of considering and acting on the following question:

"Shall an ordinance be adopted concerning votes for the Office of First Selectman as follows: 'In accordance with CGS 9-188, votes cast for a candidate for First Selectman shall count for that office only. Votes cast for an unsuccessful candidate for First Selectman shall not be counted as votes for that candidate as a member of the Board of Selectmen.'?"

	Name Print	Signature	Mailing Address
✓ 1.	William 'Bill' Ricker	William 'Bill' Ricker	421-A Wyassup Rd
✓ 2.	Amy Kimball	Amy Kimball	100 MAIN ST. NO. 57
✓ 3.	PATRICIA Ostrout	Patricia Ostrout	35 RANWOOD Rd
✓ 4.	Shannon Brucers	Shannon Brucers	281 Wyassup Rd.
✓ 5.	WALTER MATWICH	Walter Matwich	2 FANU POND Rd
✓ 6.	TERESA MATWICH	Teresa Matwich	2 FANU POND Rd
✓ 7.	Jeff Farnett	Jeff Farnett	828 PONDEN HILL RD
✓ 8.	Robert Mazzella	Robert Mazzella	247 Cassaduck Hill
✓ 9.	Lisa Mazzella	Lisa Mazzella	247 Cassaduck Hill
✓ 10.	Adriel Spring	Adriel Spring	231 Wyassup Road
✓ 11.	Emilie Lewis	Emilie Lewis	233 BURN BRIDGE Rd.
✓ 12.	Mariette Anderson	Mariette Anderson	139 Miller Rd.
✓ 13.	Stephanie Barber	Stephanie Barber	2 STRIGHT Ln.
✓ 14.	Samuel R Burdick	Samuel R Burdick	450B NORRICH WESTERLY
✓ 15.	George G. Luper II	George G. Luper II	PO BOX 37
✓ 16.	Kyle Berger	Kyle Berger	52 Stony Brook Rd.
✓ 17.	James Lord	James Lord	428 NORRICH WESTERLY Rd
✓ 18.	Robert Carlswa	Robert Carlswa	241 N.W CORNER Rd
✓ 19.	Christine Wagner	Christine Wagner	39A LODGEWOOD Rd
✓ 20.	Richard Kevin	Richard Kevin	307 W. GUY Rd
✓ 21.	Chris Anderson	Chris Anderson	139 Miller Rd
✓ 22.	David McLoer	David McLoer	225A 1 <sup>st</sup> W CORNER Rd
✓ 23.	SHAWN MURPHY	Shawn Murphy	23 KINGSWOOD TRVE
✓ 24.	Bratt Hydrovini	Bratt Hydrovini	410 Cassaduck Hill North St
✓ 25.	Nathanicaid	Nathanicaid	51 BEEBECK Rd.

I William "Bill" Ricker 421-A Wyassup Road North Stonington, CT 06359 am the circulator of the forgoing petition. Each person whose name appears on this petition page signed the same in my presence and is known to me or has satisfactorily identified to me. None of the signatures on this page were obtained earlier than six months prior to the date the page is filed. I HEREBY STATE UNDER THE PENALTIES OF FALSE STATEMENT THAT THE FORGOING STATEMENTS ARE TRUE.

RECEIVED  
2016 FEB 16 P  
NORTH STONINGTON

William 'Bill' Ricker

Signature of Circulator

\* Not known to me but signed by petition being passed to them.

1-1



We the undersigned hereby petition the North Stonington Board of Selectmen to warn a Town meeting for the purpose of considering and acting on the following question:

"Shall an ordinance be adopted concerning votes for the Office of First Selectman as follows: In accordance with CGS 9-188, ~~commencing with the regular Town election of November 3, 2015 and at each regular town election thereafter~~, votes cast for a candidate for First Selectman shall count for that office only. Votes cast for an unsuccessful candidate for First Selectman shall not be counted as votes for that candidate as a member of the Board of Selectmen."?

Name Print	Signature	Mailing Address
✓ 1. <u>Stephan Reck</u>	<u>[Signature]</u>	<u>45 Chester Main Rd</u>
✓ 2. <u>Mary Ann Ricker</u>	<u>Mary Ann Ricker</u>	<u>421-A Wyassup Rd</u>
✓ 3. <u>Robin Donahue</u>	<u>Robin Donahue</u>	<u>2 Laurel Wood Rd</u>
✓ 4. <u>Norma J. Holliday</u>	<u>Norma J. Holliday</u>	<u>42 Mains Crossing Rd. No. Ston</u>
✓ 5. <u>Cheryl Konavitch</u>	<u>Cheryl Konavitch</u>	<u>29 Hargrave Hill Rd</u>
✓ 6. <u>MARILYN MACKAY</u>	<u>[Signature]</u>	<u>92 WYASSUP LAKE RD.</u>
✓ 7. <u>KIM WALKER</u>	<u>[Signature]</u>	<u>34 PEADLETON HILL RD.</u>
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I William "Bill" Ricker 421-A Wyassup Road North Stonington, CT 06359 am the circulator of the forgoing petition. Each person whose name appears on this petition page signed the same in my presence and is known to me or has satisfactorily identified to me. None of the signatures on this page were obtained earlier than six months prior to the date the page is filed. I HEREBY STATE UNDER THE PENALTIES OF FALSE STATEMENT THAT THE FORGOING STATEMENTS ARE TRUE.

2-16-16

(Date)

[Signature]

Signature of Circulator



**Sec. 7-1.** Annual and special town meetings. Holding of meetings outside town. (a) Except as otherwise provided by law, there shall be held in each town, annually, a town meeting for the transaction of business proper to come before such meeting, which meeting shall be designated as the annual town meeting. Special town meetings may be convened when the selectmen deem it necessary, and they shall warn a special town meeting on application of twenty inhabitants qualified to vote in town meetings, such meeting to be held within twenty-one days after receiving such application. Any town meeting may be adjourned from time to time as the interest of the town requires.

(b) Where any town's public buildings do not contain adequate space for holding annual or special town meetings, any such town may hold any such meeting outside the boundaries of the town, provided such meetings are held at the nearest practical locations to the town.

**Sec. 7-2.** Ordinance concerning convening of special town meetings. Notwithstanding the provisions of section 7-1, any town may adopt an ordinance, in the manner provided by section 7-157, requiring that a special town meeting be warned by the selectmen on application of at least fifty inhabitants qualified to vote at town meetings, such meeting to be held within twenty-one days after such application is received by the selectmen; provided nothing in this section shall be construed to affect any ordinance legally adopted prior to October 1, 1957.

#### **Chapter 98 - Municipal Powers**

**Sec. 7-157.** Publication. Referendum. Publication of summary. (a) Ordinances may be enacted by the legislative body of any town, city, borough or fire district. Any such ordinance so enacted, except when enacted at a town or district meeting, shall become effective thirty days after publication thereof in some newspaper having a circulation in the municipality in which it was enacted, provided, upon a petition of not less than fifteen per cent of the electors of such municipality filed with the town or borough clerk, as the case may be, within thirty days after the publication of such ordinance, asking that the same be submitted to the voters of such municipality at its next regular or special meeting, it shall be so submitted and in such event shall not become effective unless a majority of the voters voting at such meeting vote in favor thereof. Any ordinance enacted at a town or district meeting shall become effective fifteen days after publication thereof in some newspaper having a circulation in such town or in such district, as the case may be. Cities and other municipalities whose charters provide for the manner in which they may enact ordinances may enact ordinances in such manner.

(b) Whenever any town, city, borough or fire district is required to publish any proposed ordinance or ordinance in accordance with subsection (a) of this section, the legislative body of such town, city, borough or fire district may provide that a summary of such proposed ordinance or ordinance shall be published in lieu of such proposed ordinance or ordinance, provided that, in any case in which such a summary is published, the clerk of such town, city, borough or fire district shall make a copy of such proposed ordinance or ordinance available for public inspection and shall, upon request, mail a copy of such or proposed ordinance or ordinance to any person requesting a copy at no charge to such person. Any summary so published shall bear a disclaimer as follows: "This document is prepared for the benefit of the public, solely for purposes of information, summarization and explanation. This document does not represent the intent of the legislative body of (here insert the name of the town, city, borough or fire district) for any purpose." The provisions of this subsection shall not apply to any proposed ordinance or ordinance which makes or requires an appropriation.

(c) No ordinance enacted prior to June 1, 1992, shall be invalid for failure of a municipality to comply with the provisions of this section and each municipality shall be held harmless from any liability or causes of action which might arise from such failure. If a person affected by an ordinance shows prejudice because of the failure of the municipality to comply with such provision, no penalties may be imposed against such person pursuant to the ordinance. Any ordinance enacted prior to June 1, 1992, for which the provisions of this section were not complied with shall be deemed to be effective thirty days after such enactment.

Sec. 9-188. First selectman and selectmen. Election procedure. Dual candidacy prohibited. Minority representation; restricted voting. Tie vote. Unless otherwise provided by law each town shall, at its regular municipal election, elect a first selectman, who shall be town agent **unless otherwise provided by law**; and two other selectmen or, in the case of any town having a population of ten thousand or more, not more than six other selectmen. The selectmen so elected shall constitute the board of selectmen for such town. **Unless otherwise provided by special act, charter or ordinance** the votes cast, including any valid write-in votes, for an unsuccessful candidate for first selectman shall be counted as votes for him as a member of such board, **provided no elector may be a candidate for both the office of first selectman and that of selectman by virtue of nomination by a major or minor party or a nominating petition or registration of write-in candidacy, or any combination thereof.** The provisions of section 9-167a shall apply to the election of selectmen, except that when the total membership of such board is five, the maximum number who may be members of the same political party shall be three, and provided that for the purpose of determining minority representation, the total membership of such board shall be deemed to include the first selectman, unless otherwise provided by special act or charter. Unless otherwise provided by special act, charter or ordinance, an elector shall not vote for more candidates for the office of selectman than a political party can elect pursuant to section 9-167a, provided that the number of such candidates that an elector can vote for shall be deemed to include the first selectman. If the electors fail to elect a first selectman at any election by reason of an equality of votes, such election for the office of first selectman and the election for selectmen shall stand adjourned and such adjourned election shall be held as provided in section 9-332. The ballots used in such adjourned election shall contain only the names of the candidates for the offices of first selectman and selectman which appeared on the ballot used in the election at which the tie vote resulted for the office of first selectman.

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## MEMORANDUM

**TO:** Nicholas H. Mullane II  
First Selectman  
Town of North Stonington

**FROM:** Frank N. Eppinger

**DATE:** January 8, 2014

**RE:** Proposed new ordinance regarding votes cast for unsuccessful candidate for First Selectman in accordance with Conn. Gen. Stat. §9-188.

I have reviewed Conn. Gen. Stat. §9-188, which provides in part,

... Unless otherwise provided by special act, charter or ordinance the votes cast ... for an unsuccessful candidate for First Selectman, shall be counted as votes for him as a member of such board ...

A question has been raised as to whether the Town of North Stonington can lawfully enact an ordinance overriding and nullifying the "bumping" provision of §9-188, as was apparently done by the Town of Ridgefield in the sample ordinance presented to the Board of Selectmen. I have concluded that because North Stonington, which is one of 92 municipalities in Connecticut with a pure statutory "Town Meeting" form of local government and with neither a Special Act, Charter, nor Ordinance enacted pursuant to the Home Rule Act, the Town has no lawful authority to enact an ordinance overriding and nullifying the "bumping" provision of C.G.S. §9-188.

The Town of Ridgefield has a Charter and the sample ordinance was enacted pursuant to the Charter of the Town of Ridgefield.

I have reviewed "The Connecticut Town Meeting" booklet put out by the Institute of Public Service of the University of Connecticut, 1984 Edition, and statutory recognition has been given to the fact that the Town Meeting and the Town Elections are now two separate activities, the latter being governed by the state election laws.

The booklet states that no mention is made in the booklet, of procedures for conducting town elections except as to those which may be altered by a Town Meeting vote. Legislative powers which the Town Meeting can exercise are found principally in Title 7. The power to override or nullify a "bumping" provision in the election of the First Selectman, is not among them, i.e., it was not a legislative power delegated by the



TO: Nicholas H. Mullane II, First Selectman  
DATE: January 8, 2014  
PAGE: 2

Legislature to the Town Meeting or provided to town meetings by the Connecticut Constitution.

The only legislative powers delegated to the Town Meeting under Title 9 in regard to elections are:

1. **Election officials.** A vote to establish two shifts of election officials for each polling place (C.G.S. §9-258a); and
2. **Terms of office.** Lengthen the term of office of the tax collector to more than two but not more than six years (C.G.S. §9-189). Vote to lengthen the term of office of the town clerk and registrars of voters to four years (C.G.S. §9-189a); and
3. **Various Municipal officers.** Determine, within limits provided by law, the number of town officers and whether they are elected or appointed (C.G.S. §9-185); and
4. **Voting districts and polling places.** Divide and redivide the town into voting districts and determine the location of polling places (C.G.S. §9-169). Determine, in towns not divided into voting districts, the place of holding elections (C.G.S. §9-168).

There is no delegation of legislative powers under Title 9 to override or nullify the "bumping" provision of C.G.S. §9-188 in the election of a First Selectman and Board of Selectman.

I have also researched the legislative history of C.G.S. §9-188, particularly P.A. 79-484 which changed "law" to "special act, charter or ordinance" in sentence "unless otherwise provided by..." and provided that votes cast for the unsuccessful candidate for first selectman shall be counted as votes for him as a member of such board. The Public Act passed on May 9, 1979.

Senator De Nardis stated, P. 76, "This would allow home rule to make their own decision on whether the defeated candidate for First Selectman his votes be counted towards being a member of the board..."

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TO: Nicholas H. Mullane II, First Selectman  
DATE: January 8, 2014  
PAGE: 3

Representative Walsh [The bill]...is essentially an amendment to the Home Rule Act...

Senator Casey...so under your system, if a town so chose to change its charter and allow this provision, you could have a lot of fights for First Selectman...

Rep. Walsh...yes...

Rep. Walsh...If there's a charter that's fine...The problem is that there is (sic) still innumerable towns in Connecticut that do not have a charter...

The purpose behind the Home Rule Act is to enable municipalities to draft or amend charters without an act by General Assembly and to relieve the General Assembly of burdensome tasks of handling and enacting special legislation of local municipal concern and to enable municipality to draft and adopt a home rule charter or ordinance which shall constitute organic law of city, superseding C.G.S.A. §§7-187 to 7-201 and 7-344. Canfield v. Noble, 178 Conn 81 (1979) Issues of purely local concern are best dealt with pursuant to home rule legislation.

Based on a review of the legislative history of C.G.S. §9-188, case law, the Home Rule Act, (C.G.S. §7-187 et seq) and "The Connecticut Town Meeting" booklet, I have concluded that the Town of North Stonington town meeting, which has neither a Home Rule Charter, nor Home Rule Ordinance, does not have the lawful authority to enact an ordinance overriding and nullifying the "bumping" provision of C.G.S. §9-188 with respect to the election of the First Selectman and the Board of Selectman.

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**Topic:**

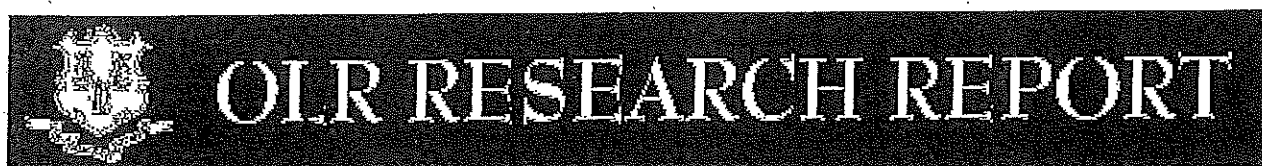
MUNICIPAL OFFICIALS/EMPLOYEES; MUNICIPALITIES; ELECTION ADMINISTRATION;

**Location:**

MUNICIPAL OFFICIALS AND EMPLOYEES;

**Scope:**

Connecticut laws/regulations;



November 22, 1999

99-R-1194

**UNSUCCESSFUL CANDIDATE FOR FIRST SELECTMAN**

By: Mary M. Janicki, Chief Analyst

You asked for a legislative history of the provision that requires votes cast for the unsuccessful candidate for first selectman be counted as votes for him as a member of the board of selectmen.

**SUMMARY**

Under section 9-188 of the General Statutes, "unless otherwise provided by special act, charter or ordinance the votes cast, including any valid write-in votes, for an unsuccessful candidate for first selectman shall be counted as votes for him as a member of such board...." The provision was enacted in 1945 when the General Assembly first created a separate office for the first selectman. Its rationale was that political parties would nominate their best candidates for that office and the legislature supported permitting the unsuccessful candidate at least to serve on the board. It maintained the tradition of electing those with the highest number of votes.

In the 1970's the legislature amended the provision to give towns the option to follow the statute or not by enacting a special act, charter, or ordinance. Towns that want to separate the races for first selectman and members of the board of selectmen can do so. The legislature considered the arguments for separation when it enacted the

option authority.

## 1945 ENACTMENT

In 1945, the General Assembly enacted the law creating the separate office of first selectman and allowing the losing first selectman candidate to be elected to the board (Public Act 215). In the legislative history of the bill (SB 98), Senator Spellman explained in an introduction at the Elections Committee's public hearing: "[Y]ou have four running, three get in..." (p. 42). There is no other committee testimony or floor debate to describe the background or intent of this provision.

But a 1959 Superior Court case in an election dispute describes the language of § 9-188 as "clear, definite and unambiguous and admits of no statutory construction." The ruling goes on to discuss legislative intent, derived from a Report of the Legislative Council, dated November 16, 1944. Judge Bogdanski wrote:

When the office of first selectman was created in 1945, it was recognized by the legislature that both major parties would put forth their most able candidates for the office of first selectman, and it was the evident intention of the legislature to allow the unsuccessful candidate to vie for a place on the board.... This was done for two reasons. The legislature wanted to preserve the historical plurality rule, namely, '[t]hat number of persons sufficient to fill the offices... who have the highest number of votes shall be elected.' Rev. 1930. ... [T]he General Assembly saw fit to continue to honor the respective vote-getting powers of each of the candidates to the board as a whole (*Edward Conlan v. James H. Burton et. al.*, 21 Conn. Sup. 482, 484-5).

## 1970'S AMENDMENTS

In 1975, the legislature amended the provision to give towns authority to create an exception where towns adopt a charter provision to the contrary (PA 75-249). The bill passed on the consent calendar in both houses. Later, the General Assembly substituted "law" for a charter provision (PA 76-173) and PA 79-484 expanded "law" to "special act, charter or ordinance."

→ The legislative history of the 1979 bill that allowed even towns without a charter to decide for themselves whether to allow the losing first selectman candidate to become a member of the board shed some light on the arguments for and against the provision. Representative Robert "Skip" Walsh of Coventry sponsored the measure at the request of Willington constituents. In his testimony before the Government Administration and Elections Committee, he urged:

that this simply become an additional option for towns that choose to employ that rather than the present method, which allows that each party put up a couple of candidates, and then one out of the four loses.... [W]hat we're simply doing is giving towns additional opportunities, if they desire them.... [W]hat it simply calls for is that

1-10



the First Selectmanic (sic) candidates from each of the parties engage themselves in a head on political battle during a campaign. One shall win; one shall lose. And the loser will be out of the picture, and that's it. (Government Administration and Elections Committee, March 26, 1979, p. 1036).

Representative Walsh also made the distinction that the office of first selectman is usually an executive position, while the board of selectmen is a legislative body. Because the offices are different, the losing candidate for one, ought not become a candidate by default for the other.

The public hearing included testimony from a number of Willington residents who made the following arguments against permitting the losing candidate to become a member of the board, thus supporting the bill giving towns the option.

The law making the losing candidate eligible to become a member of the board:

1. forces first selectman candidates and selectmen candidates to run against one another;
2. confuses the voters;
3. can result in controversy and fighting on the resultant board between the losing first selectman candidate and the elected first selectman, to the town's detriment;
4. gives candidates for first selectman an unfair advantage by allowing them to run for two offices simultaneously, one for which they are not nominated;
5. because the office of first selectman (many times a paid, full-time job) is very different from the office of board member (a volunteer, part-time board), the pools of potential candidates for each job are quite different; and
6. the option to run for the head or a member of board is not available for any other elective town boards.

MMJ:gt

1-11



1-12

Robin Roohr

---

**From:** Frank N Eppinger <[fne@mysticlawyers.com](mailto:fne@mysticlawyers.com)>  
**Sent:** Wednesday, August 26, 2015 1:31 PM  
**To:** Robin Roohr  
**Subject:** Conn. Gen. Stat. section 9-188

Nick,

In the OLR Research Report by Mary M. Janicki dated November 22, 1999, entitled "Unsuccessful Candidate For First Selectman" there is mention of Public Act 79-484 and Representative Walsh of Coventry who sponsored the measure at the request of Willington constituents (a non-charter, common law town). I was able to get through to the Town Clerk of Willington and she assured me that Willington does not have an ordinance overriding and nullifying the "bumping" provision of section 9-188. The unsuccessful candidate for First Selectman there gets a seat on the Board. In the legislative history that I reviewed carefully in 2013, Representative Walsh stated...(The Bill)...is essentially an amendment to the Home Rule Act... Ms. Janicki in her article did not make mention of that quote but did place emphasis on some testimony of residents of Willington where the ordinance was not enacted.

An independent look at this question would certainly be in order. I could find no non-charter, common law town which enacted the ordinance and perhaps CCM will be able to do so.

Best,

Frank N. Eppinger  
O'Brien Stuart Eppinger & Collier, LLC  
9 Mason's Island Road  
Mystic, CT 06355  
(860) 536-3388  
(860) 536-3461 fax

[fne@mysticlawyers.com](mailto:fne@mysticlawyers.com)

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\*\*\*\*\*

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9/1/2015

for Nick Mullane

**for Nick Mullane**

**Thomas Londregan** [TLondregan@clsmlaw.com]

**Sent:** Tuesday, September 01, 2015 4:20 PM

**To:** Susan Henderson

**Attachments:** NS Notes.docx (15 KB)

Please see my thoughts outline in the attached memo.....North Stonington may pass an ordinance to "opt out" of the requirements of General Statute §9-188 ..... I can do more research if you want.....and a more complete opinion letter.

Thomas J. Londregan, Esq.

Conway, Londregan, Sheehan & Monaco, P.C.

38 Huntington Street

New London, CT 06320

860-447-3171

860-444-6103 (fax)

[tlondregan@clsmlaw.com](mailto:tlondregan@clsmlaw.com)

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- There are 3 kinds of municipalities under the laws of the State of Connecticut: (1) municipalities who are established by Special Act of the Legislature; (2) municipalities who have adopted municipal charters (under the Home Rule Statutes); and (3) non-chartered municipalities, who's powers are set forth in state statutes.
- A basic principle of law is that a town, as a creature of the state, can exercise only such powers as are expressly granted to it, or such powers as are necessary to enable it to discharge the duties and carry into effect the objects and purposes of its creation. In other words, you look to a municipality's charter or to state statute for authority to act.
- In a non-chartered municipality, like North Stonington, you look to the state statutes for the powers and authority that the town has.
- General Statute §7-148(b) provides that the "powers granted to any municipality under the general statutes...shall be exercised by ordinance when the exercise of such powers has the effect of...creating a permanent local law of general applicability." (emphasis added).
- General Statute §7-157(a) provides that ordinances may be enacted by the legislative body of any town; and that if any ordinance so enacted is enacted at a town meeting, it becomes effective fifteen days after publication in a newspaper with a circulation with the town. In other words, this statute provides that the town meeting is the legislative body of the town.
- In turning to General Statute §9-188, the statute states that, "unless otherwise provided by special act, charter or ordinance the votes cast...for an unsuccessful candidate for First Selectman, shall be counted as votes for him as a member of such board...." (emphasis added).
- If the legislature did not want to allow non-chartered municipalities from being able to take advantage of opting out of the provisions of §9-188, it could have limited the qualifying language to only, "unless otherwise provided by special act or charter," as it has done in other general statutes (e.g. General Statute §8-37qq). Applying the rules of statutory construction, it must be interpreted that the legislature wanted to include the ability of a municipality to pass an ordinance, and not just limit the "opt out" to municipalities created by special act or that have a home rule charter.
- Based upon the foregoing, North Stonington may pass an ordinance to "opt out" of the requirements of General Statute §9-188 pursuant to the language of §9-188 and the powers set forth under General Statute §7-148(b). Such an ordinance would be adopted by the town's legislative body, which, pursuant to General Statute §7-157, would be a town meeting.

FROM SECRETARY OF STATES OFFICE

Robin Roohr

**From:** Norma Holliday  
**Sent:** Tuesday, September 08, 2015 3:20 PM  
**To:** Robin Roohr  
**Subject:** FW: Question

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**From:** Augeri, Heather [mailto:Heather.Augeri@ct.gov]  
**Sent:** Friday, September 04, 2015 10:22 AM  
**To:** Norma Holliday  
**Subject:** RE: Question

Better than what other towns have. A statute. Unless otherwise provided by special act, charter or ORDINANCE

.....

Sec. 9-188. First selectman and selectmen. Election procedure. Dual candidacy prohibited. Minority representation; restricted voting. Tie vote. Unless otherwise provided by law each town shall, at its regular municipal election, elect a first selectman, who shall be town agent unless otherwise provided by law, and two other selectmen or, in the case of any town having a population of ten thousand or more, not more than six other selectmen. The selectmen so elected shall constitute the board of selectmen for such town. Unless otherwise provided by special act, charter or ordinance the votes cast, including any valid write-in votes, for an unsuccessful candidate for first selectman shall be counted as votes for him as a member of such board, provided no elector may be a candidate for both the office of first selectman and that of selectman by virtue of nomination by a major or minor party or a nominating petition or registration of write-in candidacy, or any combination thereof. The provisions of section 9-167a shall apply to the election of selectmen, except that when the total membership of such board is five, the maximum number who may be members of the same political party shall be three, and provided that for the purpose of determining minority representation, the total membership of such board shall be deemed to include the first selectman, unless otherwise provided by special act or charter. Unless otherwise provided by special act, charter or ordinance, an elector shall not vote for more candidates for the office of selectman than a political party can elect pursuant to section 9-167a, provided that the number of such candidates that an elector can vote for shall be deemed to include the first selectman. If the electors fail to elect a first selectman at any election by reason of an equality of votes, such election for the office of first selectman and the election for selectmen shall stand adjourned and such adjourned election shall be held as provided in section 9-332. The ballots used in such adjourned election shall contain only the names of the candidates for the offices of first selectman and selectman which appeared on the ballot used in the election at which the tie vote resulted for the office of first selectman. \*

(1949 Rev., S. 510, 515; 1949, S. 106b; 1953, 1955, S. 669d; P.A. 75-249; P.A. 76-173, S. 4; 76-363; P.A. 77-99; 77-578, S. 2, 3, 4; P.A. 79-484; P.A. 80-281, S. 12, 31; P.A. 83-475, S. 18, 43; P.A. 84-319, S. 27, 49; P.A. 11-20, S. 1.)

History: P.A. 75-249 provided an exception for charter provisions adopted pursuant to chapter 99; P.A. 76-173 deleted reference to charter provisions adopted pursuant to chapter 99 and substituted "law" therefor, added "unless otherwise provided by law" to prescription that each town elect selectmen etc.; P.A. 76-363 deleted provisions concerning voting for either half or bare majorities of number to be elected and also provision that no more than bare majority shall be members of same political party and substituted "the provisions of section 9-167a shall apply to the election of selectmen"; P.A. 77-99 added exception that if total membership is five, maximum number from same party to be three, including the first selectman in counting total membership, unless otherwise provided by special act or charter; P.A. 77-578 added that elector cannot vote for more candidates than a political party can elect pursuant to Sec. 9-167a and provided number is deemed to include the first selectman; P.A. 79-484 changed "law" to "special act, charter or ordinance" in sentence "unless otherwise provided by ..." and provided that votes cast for the unsuccessful candidate for first selectman shall be counted as votes for him as a member of such board; P.A. 80-281 added proviso concerning counting of votes for unsuccessful candidate for first selectman as votes for board membership where he has also received write-in votes as candidate for board member; P.A. 83-475 amended section to permit full voting for board of



selectmen at town option; P.A. 84-319 amended section to provide uniformity in statutes re adjourned elections and write-in votes; pursuant to P.A. 11-20, "ballot label" and "ballot labels" were changed editorially by the Revisors to "ballot" and "ballots", respectively, effective May 24, 2011.

Annotations to former statutes:

Whether under Art. 10, Sec. 2, of the constitution, the election of one selectman, only, is lawful. 32 C. 108. The plurality is of the ballots as actually cast, not as originally printed. 60 C. 352. Office of first selectman was created by Rev. St., 1875, Ch. 3, Sec. 2. 46 C. 549; 42 C. 463. History of section and of office of first selectman. 75 C. 460. Application to previous form of ballot. 91 C. 365; 102 C. 589; 104 C. 398; 105 C. 259. Cited. 130 C. 714. Election officials justified in refusing to permit plaintiff to vote for two candidates for first selectman. 135 C. 147. The clearly expressed intent of the legislature was that the principal of minority representation should control the results of special elections as well as those of regular elections. 143 C. 679.

Annotation to present section:

Statute clearly states that unsuccessful candidate for office of first selectman may vie for place on the board; successful candidate for first selectman does not determine political affiliation of majority of board. 21 CS 482.

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**From:** Norma Holliday [mailto:[nholliday@northstoningtonct.gov](mailto:nholliday@northstoningtonct.gov)]

**Sent:** Friday, September 4, 2015 9:56 AM

**To:** Augeri, Heather <[Heather.Augeri@ct.gov](mailto:Heather.Augeri@ct.gov)>

**Subject:** RE: Question

Our town doesn't have a charter so if you could check the ones that don't have one that would be helpful. This is being questioned by someone who is running for First Selectman he claims we cannot have an ordinance for this so we are covering our bases with all the information we can get. Thanks again!

Norma

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**From:** Augeri, Heather [mailto:[Heather.Augeri@ct.gov](mailto:Heather.Augeri@ct.gov)]

**Sent:** Friday, September 04, 2015 8:18 AM

**To:** Norma Holliday

**Subject:** RE: Question

It's too early for this kind of question but.....

I would say more than 1/2 of the towns have charters and this is not an unusual ordinance. I can hunt through some charters and find you examples. Will get back to you by end of the day.

H

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**From:** Norma Holliday [mailto:[nholliday@northstoningtonct.gov](mailto:nholliday@northstoningtonct.gov)]

**Sent:** Friday, September 4, 2015 8:10 AM

**To:** Augeri, Heather <[Heather.Augeri@ct.gov](mailto:Heather.Augeri@ct.gov)>

**Subject:** Question

Good Morning Heather,

One of our residence has submitted a petition to me and the Selectman and a Town Meeting has been called this is how it reads; "Shall an ordinance be adopted concerning votes for the Office of First Selectman as follows: In accordance with CGS 9-188, commencing with the regular Town election of November 3, 2015 and at each regular town election thereafter, votes cast for a candidate for First Selectman shall count for that office only. Votes cast for an unsuccessful candidate for First Selectman shall not be counted as votes for that candidate as a member of the Board of

Selectmen."? My question to you is has any other Town done this and how many Towns do not have a charter. If this is not your expertise can you direct me to anyone who can answer my question. As always thank you for your help!!

Norma Holliday  
Town Clerk  
North Stonington

1-20



Robin Roohr

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From: Diana Urban <dsju22@aol.com>  
Sent: Thursday, September 10, 2015 8:56 PM  
To: Robin Roohr  
Subject: Fwd: Election of Selectman Pursuant to CGS 9-188  
Attachments: image001.png; ATT00001.htm; Eppinger Opinion January 8 2014.pdf; ATT00002.htm

Here is what I received from the SOS office

Sent from my iPhone

Begin forwarded message:

From: "Bromley, Ted" <Ted.Bromley@ct.gov>  
Date: September 10, 2015 at 4:54:21 PM EDT  
To: "btesta@northstoningtonct.gov" <btesta@northstoningtonct.gov>  
Cc: "fne@mysticlclawyers.com" <fne@mysticlclawyers.com>, "Reeves, Peggy" <Peggy.Reeves@ct.gov>, 'Diana Urban' <dsju22@aol.com>  
Subject: Election of Selectman Pursuant to CGS 9-188

Dear Selectman Testa:

This message is in response to a recent inquiry received by this office regarding the November 3, 2015 municipal election. More specifically, we have been asked if it would be permissible to enact an ordinance to alter the method by which members of the board of selectman are elected at the November 2015 election to be held in your municipality. The default provision of Connecticut General Statutes Section 9-188, is to allow the votes cast for an unsuccessful candidate for first selectman to be counted as votes for such candidate as a member of such board. The statute is clear, however, that this default provision can be altered by special act, charter or ordinance. "Unless otherwise provided by special act, charter or ordinance the votes cast, including any valid write-in votes, for an unsuccessful candidate for first selectman shall be counted as votes for him as a member of such board, provided no elector may be a candidate for both the office of first selectman and that of selectman by virtue of nomination by a major or minor party or a nominating petition or registration of write-in candidacy, or any combination thereof." *CGS Section 9-188*. It is our understanding however, that your municipal attorney has already issued an opinion on this matter (attached hereto) and has stated that the municipality does not have the ability to alter the default provision described above. It has always been the position of this office to defer to and support the decisions made by municipal attorneys especially when they are made regarding issues that fall outside the jurisdiction of this office, here the Home Rule Act.

In addition to the opinion of the municipal attorney, we felt it was necessary to provide some additional reasoning as to why such a change, if it were allowable, should not be made at this juncture in the electoral process. As you may know, the electoral process in the State of Connecticut is based upon a series of deadlines as set forth in the General Statutes. These deadlines are intended to provide a solid structure by which each municipality runs an orderly and efficient election and they are also intended to provide important and timely information to all candidates and political parties who intend to place candidates on the election ballot. See generally *Butts v. Bysiewicz*, 298 Conn. 665 (2010) ("It generally is understood that filing deadlines for ballot access are designed to ensure the integrity of the election process in general" and "deadlines ensure the orderly functioning of the primary-election timetable so that those responsible will have sufficient time to prepare that ballot properly".) It is our experience that much planning goes into how many candidates a political party may choose to endorse and for what

offices. In many cases, based on minority representation (CGS Section 9-167a) and the availability of candidates, political parties may under endorse or choose not to endorse for a particular office. All of these decisions must be made within the strict timeframe provided by the General Statutes for party endorsements. The endorsement framework set by the General Statutes includes several important deadlines have already expired. First, Connecticut General Statutes Section 9-254 requires that each municipal clerk file a "list of the offices to be filled" at such election and the terms thereof and the number of candidates for which each elector may vote with our office. "Each municipal clerk shall, not later than the one hundred eightieth day prior to the day of any regular municipal election, file with the Secretary of the State, on a form approved by said Secretary, a list of the offices to be filled at such election and the terms thereof and the number of candidates for which each elector may vote. Said Secretary shall, within seventy days from the date of receipt of such list, return a copy of such list to the municipal clerk. Each municipal clerk shall, not later than ten days after the receipt of the returned list, mail a copy thereof to the chairman of the town committee of each major political party within the municipality." *CGS Section 9-254*. Within this filing requirement exists an obligation on the part of the municipal clerk to mail a copy of such list to the chairman of the town committee of each major party. Clearly, this requirement exists so that each major party can recruit qualified individuals to run for the various offices up for election during the election cycle in question. The notice also includes a statement as to the number of candidates for which each elector may vote. This is important because Connecticut General Statutes Section 9-414 restricts the number of candidates any one political party can endorse to the number any elector can vote for within each office. "No town committee, caucus or convention shall endorse and certify to the clerk of a municipality, and no primary shall choose, more candidates for nomination to municipal office or more persons as members of a town committee than an elector may vote for in each such case." *CGS Section 9-414*. As such, a clear structure of notice is created by the General Assembly that is intended to allow both major parties the opportunity to recruit and plan for how they intend to endorse candidates for the election ballot. The General Assembly did not take this notice requirement lightly and restricted the manner in which the "list of the offices to be filled" could be altered by the municipal clerk. Only those late occurring vacancies that fall within certain dates that correspond to each major party's endorsement window can be added to the ballot. Those vacancies occurring after all "ballot access" deadlines have passed are not allowed to be placed on the ballot but instead are filled by an alternate appointment. *See generally CGS Section 9-221*.

Second, any opportunity to endorse additional candidates has also expired. Connecticut General Statutes Section 9-405 sets forth the deadline by which an enrolled party member can gain ballot access by primary petition. "Candidates of persons other than party-endorsed candidates for nomination by a political party to a municipal office to be voted upon at a municipal election, or for election as town committee members shall be filed with the registrar, as provided in section 9-406, not later than four o'clock p.m. on the thirty-fourth day preceding the day of the primary of such party for the nomination of candidates for such office or for the election of town committee members. Said day and hour shall be specified on the petition forms." *CGS Section 9-405*. In the rare situation where a major political party fails to endorse a candidate for office, the General Assembly provided a final alternative to place additional candidates on the party line through the use of a primary petition. *See generally CGS Section 9-418*.

Third, the notice deadline and opportunity to force any primary has also expired. Connecticut General Statutes Section 9-395 requires the municipal clerk to publish that a list of endorsed candidates is on file with her office. "Forthwith upon the certification provided in section 9-391, the clerk of the municipality shall publish, in a newspaper having a general circulation in such municipality, the fact of such certification and that a list of the persons endorsed as candidates is on file in his office and copies thereof are available for public distribution". *CGS Section 9-395*. Such notice also indicates that if any elector wants to challenge any endorsed candidate they can do so through the use of a primary petition. Again, it is clear that the legislature intended to provide the general public a true and accurate picture of the endorsed candidates and the opportunities to gain ballot access at a certain time during the election cycle. In turn, these deadlines also allow each candidate so endorsed the opportunity to



know if they will be challenged in a primary or if they are free to focus their attention on the general election in November. These notices, however, are all based upon the deadlines that have preceded them in the election cycle and they all build upon on another as the election calendar moves closer to election day.

The examples set forth above are only a few of the deadlines provided throughout the Connecticut General Statutes with regard to the election calendar. They do exemplify, however, the overall intention of the General Assembly to provide clear notice to each major party and to all candidates of the opportunities to obtain ballot access. These opportunities allow the candidates and the major parties the opportunity to recruit candidates and to plan how many candidates to endorse or whether they will endorse a candidate at all for a given office. For example, the question at issue here involves the Board of Selectman. If the general rule were in place, as it was in this case during the initial endorsement period, a political party may decide to endorse only a single candidate for the office of first selectman because of the lack of candidates or simply because of strategy. They may use this strategy because they know that the votes cast for an unsuccessful candidate for first selectman are included in the totals for the board of selectman. However, if an ordinance was passed before the endorsement period, and this same political party had adequate notice that an unsuccessful candidate for first selectman would not be included in any race for the board of selectman, that political party may indeed decide to endorse a candidate for both first selectman and board of selectman. Adequate notice being the operative word and theme.

Taking the entire electoral scheme into account, it is clear that the legislature intended to provide adequate notice to all political parties and candidates of the opportunities to obtain ballot access and for which offices they have the ability to run candidates. This is exemplified by the various notice requirements set forth above and strengthened by the manner in which the General Assembly addresses late occurring vacancies. As such, it would be contrary to these principles if a municipality altered a fundamental method by which the board of selectman of a municipality were elected after all applicable deadlines and opportunities to endorse candidates have expired.

**Sec. 9-188. First selectman and selectmen. Election procedure. Dual candidacy prohibited. Minority representation; restricted voting. Tie vote.** Unless otherwise provided by law each town shall, at its regular municipal election, elect a first selectman, who shall be town agent unless otherwise provided by law, and two other selectmen or, in the case of any town having a population of ten thousand or more, not more than six other selectmen. The selectmen so elected shall constitute the board of selectmen for such town. Unless otherwise provided by special act, charter or ordinance the votes cast, including any valid write-in votes, for an unsuccessful candidate for first selectman shall be counted as votes for him as a member of such board, provided no elector may be a candidate for both the office of first selectman and that of selectman by virtue of nomination by a major or minor party or a nominating petition or registration of write-in candidacy, or any combination thereof. The provisions of section 9-167a shall apply to the election of selectmen, except that when the total membership of such board is five, the maximum number who may be members of the same political party shall be three, and provided that for the purpose of determining minority representation, the total membership of such board shall be deemed to include the first selectman, unless otherwise provided by special act or charter. Unless otherwise provided by special act, charter or ordinance, an elector shall not vote for more candidates for the office of selectman than a political party can elect pursuant to section 9-167a, provided that the number of such candidates that an elector can vote for shall be deemed to include the first selectman. If the electors fail to elect a first selectman at any election by reason of an equality of votes, such election for the office of first selectman and the election for selectmen shall stand adjourned and such adjourned election shall be held as provided in section 9-332. The ballots used in such adjourned election shall contain only the names of the candidates for the offices of first selectman and



selectman which appeared on the ballot used in the election at which the tie vote resulted for the office of first selectman.

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Bruce A. Chudwick  
Phone: (860) 251-5114  
Fax: (860) 251-5212  
[bchudwick@goodwin.com](mailto:bchudwick@goodwin.com)

September 14, 2015

VIA EMAIL

Nicholas H. Mullane, First Selectman  
Town of North Stonington  
Old Town Hall  
40 Main Street  
North Stonington, CT 06359

Re: Petition for an Ordinance relating to  
Section 9-188 of the Connecticut General Statutes

Dear Mr. Mullane:

You have asked for our opinion as to whether Section 9-188 of the Connecticut General Statutes ("Section 9-188") would allow the Town of North Stonington (the "Town") to adopt an ordinance to provide that the votes cast for an unsuccessful candidate for First Selectman not be counted as votes for such person as a member of the Board of Selectmen. If such an ordinance can be adopted, you have also asked for our opinion as to whether the action requested in the petition dated August 21, 2015 to warn a Town Meeting to adopt such an ordinance (the "Petition") is a permissible action for the Town Meeting to take on September 14, 2015.

Brief Facts

The Town does not have a charter, and therefore its powers are delineated by the Connecticut General Statutes.

The Petition requested that the Board of Selectmen warn a Town Meeting for the purpose of considering and acting on the following question: "Shall an ordinance be adopted concerning votes for the Office of First Selectman as follows: In accordance with CGS 9-188, commencing with the regular Town election of November 3, 2015 and at each regular town election thereafter, votes cast for a candidate for First Selectman shall count for that office only. Votes cast for an unsuccessful candidate for First Selectman shall not be counted as votes for that candidate as a member of the Board of Selectmen."

1-25

On September 8, 2015, the Board of Selectmen acted on the petition by warning a Town Meeting to be held on September 14, 2015 to consider and act upon the question in the Petition.

The next municipal election will be held on November 3, 2015. As of the date of this letter, both major political parties have selected their slate of candidates to run for the positions of First Selectman and Selectman. There is also a petitioning candidate running for Selectman.

#### Questions Presented

1. Does Section 9-188 allow the Town to adopt an ordinance to provide that the votes cast for an unsuccessful candidate for First Selectman not be counted as votes for such person as a member of the Board of Selectmen?

2. If the answer to the first question is yes, is the action requested under the Petition a permissible action for the Town Meeting to take on September 14, 2015?

#### Brief Answers

Section 9-188 does allow the Town to adopt an ordinance to provide that the votes cast for an unsuccessful candidate for First Selectman not be counted as votes for such person as a member of the Board of Selectmen.

The Town Meeting to take place on September 14, 2015 may act on the ordinance question in the Petition, but there is a substantial risk that, if the action to adopt the ordinance is approved, it would be overturned if challenged because it changes the process for determining the results of the November 3, 2015 election after the statutory deadlines for determining candidates has expired. Such an action to overturn the ordinance could create uncertainty as to the election results and could be costly to the Town in defending the ordinance's adoption.

Discussion - First Question - Does Section 9-188 allow the Town to adopt an ordinance to provide that the votes cast for an unsuccessful candidate for First Selectman not be counted as votes for such person as a member of the Board of Selectmen?

Section 9-188, in pertinent part, provides: "Unless otherwise provided by special act, charter or ordinance the votes cast, including any valid write-in votes, for an unsuccessful candidate for first selectman shall be counted as votes for him as a member of such board, provided no elector may be a candidate for both the office of first selectman and that of selectman by virtue of nomination by a major or minor party or a nominating petition or registration of write-in candidacy, or any combination thereof."



The rule for interpreting statutes is contained in Section 1-2z of the Connecticut General Statutes, which provides that: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

By providing the qualifying language "Unless otherwise provided by special act, charter or ordinance", Section 9-188 clearly contemplates that an ordinance may provide for a different manner of counting the votes for an unsuccessful candidate for first selectman than is specified as the general rule in that statute.

However, even though the statutory language is clear, the legislative history of Public Act No. 79-484, in which the wording "special act, charter or ordinance" replaced the word "law" that was in the then existing statute, indicates that it was a deliberate legislative change that would allow towns to change the general rule in Section 9-188 by ordinance and not just by special act or charter. First, in discussion of this Act during the March 26, 1979 proceedings of the Government Administration and Elections Committee, Representative Walsh, speaking in support of the provision allowing towns to make this change, stated that "It was never my intention, nor was it the intention of the individuals who brought this matter to my attention, that this be mandatory for everyone who is seeking a means of electing selectmen, but rather just to give it time, if it so chose, through enactment of a local ordinance, to create a head on head fight within the political process for its First Selectman." Then, in response to a question from Representative Parker about why the provisions of Section 9-188 could not be possible under a community's charter, Representative Walsh stated "The problem is that there is still innumerable towns in Connecticut that do not have a charter. In fact, the town that suggested this bill to me is a town that is charterless, and works with just ordinance and home rule right now..." (Remarks of Rep. Parker and Rep. Walsh on pages 1039 and 1040 of the Joint Standing Committee Hearings, March 26, 1979). Then on the floor of the House of Representatives when the Act was being considered for adoption, Representative Walsh explained:

Mr. Speaker, this is a very simple bill. And, what it does is it, through the Home Rule Acts, increases the numbers of options that are available to local municipalities should they care to avail themselves of them, in terms of their style or manner in which they elect selectmen. Mr. Speaker, the bill itself addresses itself to allowing, unless otherwise provided by special act, charter, or ordinance, for a head on run off between first selectman candidates and it's a good bill.



During the deliberations on this bill, Mr. Speaker, it was brought to the attention of the Subcommittee on Elections that the word act or charter ought to be sufficient and that the need for ordinance needn't apply. The secretary of state's office, the assistant election's attorney, however, has clarified that matter and made it very clear that the word law needn't necessarily include any enactment of the legislative body and hence the need for the word ordinance being included in there which gives the town the ultimate option as to what it does.

(May 9, 1979 Connecticut General Assembly House Proceedings, Volume 22, Part 19 Page 6481).

In addition, it is worth noting that at least two other Connecticut municipalities have adopted such an ordinance by a vote of a town meeting. The towns of Sharon and Salisbury are two towns without town charters and they adopted ordinances in 1998 and 2013, respectively, providing that the votes cast for an unsuccessful first selectman candidate not be counted as votes for a member of the board of selectmen. It is also worth noting, for purposes of addressing the second question below, that these towns adopted their ordinances in March of those years, well in advance of their next municipal elections.

Discussion - Second Question - If the answer to the first question is yes, is the action requested under the Petition a permissible action for the Town Meeting to take on September 14, 2015?

The action requested in the Petition specifically states that the ordinance be effective with the regular Town election of November 3, 2015. In so doing, the Petition requests that the rule for how the vote count will take place be changed and therefore may directly impact who gets seated as a Selectman at the November 3, 2015 election.

Section 9-188 has no limitations as to the effective date of an ordinance modifying the general provision of that statute that the votes cast for an unsuccessful candidate for first selectman be counted as votes for such person as a member of the board of selectmen. We did not find any other statute or regulation that addresses or limits the effective date of such an ordinance, and there is no caselaw relating to Section 9-188 that would provide guidance on how a court would rule on such a question. The legislative history of Public Act No. 79-484 does not indicate any consideration was given by the Legislature to the timing of the effective date of such an ordinance.

In this instance, the effective date of the proposed ordinance would be 15 days after publication of its adoption in a newspaper having a circulation in the Town, i.e., on or about October 1, 2015 if publication is made promptly after the September 14, 2015

Town Meeting. This would be approximately 34 days prior to the November 3, 2015 municipal elections and well after the statutory time periods for the political parties to endorse candidates, for primaries to be held, if applicable, and for petitioning candidates to file petitions to be on the ballot. Approval of such a change at this point in the political process could allow a person to file an action in court to prevent the ordinance from taking effect, or to order the Town Clerk to declare a certain election result, on the basis that the election rules were changed after the process for determining candidates was completed.

Section 9-328 of the Connecticut General Statutes allows for contests and complaints in the election of municipal officers. It provides that: "Any elector or candidate claiming to have been aggrieved by any ruling of any election official in connection with an election for any municipal office or a primary for justice of the peace, or any elector or candidate claiming that there has been a mistake in the count of votes cast for any such office at such election or primary, or any candidate in such an election or primary claiming that he is aggrieved by a violation of any provision of sections 9-355, 9-357 to 9-361, inclusive, 9-364, 9-364a or 9-365 in the casting of absentee ballots at such election or primary, may bring a complaint to any judge of the Superior Court for relief therefrom."

In order to prevail under a Section 9-328 claim, "a plaintiff has the burden to establish more than just a violation of title 9 of the General Statutes; rather, the plaintiff must satisfy, by a preponderance of the evidence, three distinct elements established by case law: (1) a ruling of an election official, (2) that was in error; and (3) as a result of this improper ruling, the result of the election might have been different and the court is unable to determine the outcome."

Under the facts in this instance, the unsuccessful candidate for First Selectman, for example, could argue that the decision by the Town Clerk not to seat him or her on the Board of Selectmen if he or she receives the second or third highest vote count is a ruling that is in error and clearly affects the outcome of the election. Although we cannot state definitively how a judge might rule on such a complaint, it is clear that the election statutes are designed to give all candidates and political parties adequate notice and opportunity to make decisions about who will run for political office and which offices they will seek. Any change as to how votes will be counted or how individuals will be elected after the nomination and petitioning processes have concluded, is a substantial change in the overall election process.

Also, we note that Ted Bromley, an attorney with the Secretary of State's office, has provided the Town with additional information regarding the electoral process and the statutory deadlines. In his email to Selectman Testa on September 10, 2015, he noted these statutory deadlines for determining candidates for office and concluded with



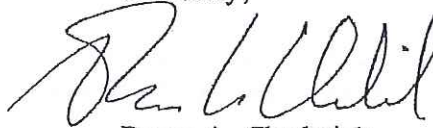
Nicholas H. Mullane, First Selectman  
September 14, 2015  
Page 6

the following: "Taking the entire electoral scheme into account, it is clear that the legislature intended to provide adequate notice to all political parties and candidates of the opportunities to obtain ballot access and for which offices they have the ability to run candidates. This is exemplified by the various notice requirements set forth above and strengthened by the manner in which the General Assembly addresses late occurring vacancies. As such, it would be contrary to these principles if a municipality altered a fundamental method by which the board of selectmen of a municipality were elected after all applicable deadlines and opportunities to endorse candidates have expired."

Therefore, although the action requested under the Petition is a permissible action for the Town Meeting to take, there is a substantial risk to the Town that taking such action could give rise to an action under Section 9-328 of the Connecticut General Statutes to overturn such action, which could create uncertainty as to the election results and be costly to the Town in defending the ordinance's adoption.

I would be pleased to answer any further questions regarding this issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce A. Chudwick", written in a cursive style.

Bruce A. Chudwick

4286664v3

T-30

**Center for Emergency Services  
North Stonington**

*40 Main Street  
North Stonington, Connecticut 06359  
(860) 535-2877  
Fire.EMS.comm@nsvfc.org*

February 2, 2016

Shawn P. Murphy, First Selectman  
Town of North Stonington  
40 Main St.  
North Stonington CT 06359

RE: CES Additional Funding

Dear Mr. Murphy,

During the February 1, 2016 meeting of the CES Building Committee, the Committee voted to request the Board of Selectman forward the Committee's request for additional funding, in the amount of \$2.254m, to the Board of Finance for their approval. It is the Committee's understanding that once approved by the Board of Finance, the Board of Selectmen will then set a date for a Special Town Meeting. Please let the Committee know if there is further information that we can provide.

Thank you for your continued support of this project.

Sincerely,



Mark Perkins, Chairman  
North Stonington CES Building Committee

mp/kcm





2-2



*Town of*  
*North Stonington, Connecticut*

RESOLUTION OF BOARD OF SELECTMEN

RESOLVED, that the Board of Selectmen recommends that the Town of North Stonington increase by \$2,254,000 the \$6,360,000 appropriation approved at referendum held July 29, 2013 for costs related to the design and construction of a new Emergency Services Complex and related improvements to be situated at 25 Rocky Hollow Road in North Stonington, for an aggregate appropriation of \$8,614,000; and that the Town increase by \$2,254,000 the \$6,360,000 authorization of bonds or notes and temporary notes approved at referendum held July 29, 2013 to finance the aforesaid appropriation, for an aggregate borrowing authorization of \$8,614,000. The amount of bonds or notes authorized to be issued to finance the appropriation shall be reduced by the amount of grants received by the Town for the project. The appropriation may be spent for design and construction costs, including administrative costs, architects' fees, engineering fees, testing, survey, printing and advertising costs, equipment, materials, legal and other professional fees, net temporary interest and other financing costs, and other expenses related to the project and the financing thereof.

FURTHER RESOLVED, that such recommendations be submitted to the Board of Finance for its approval.

Approved by the Board of Selectmen 2/9/2016 with a unanimous 3-0 vote

2 - 3



*Town of*  
*North Stonington, Connecticut*

To: Board of Finance  
From: Board of Selectmen  
Date: February 15, 2016  
Subject: Additional Appropriation Request

On February 9, 2016 the Board of Selectmen approved, 3-0, a resolution recommending that the Town of North Stonington increase by \$2,254,000 the \$6,360,000 appropriation approved at referendum held July 29, 2013 and to submit such recommendation to the Board of Finance for its approval. A copy of the full resolution is attached.

Thank you for your attention to this item, which with your approval will be forwarded to the next special town meeting and subsequent referendum for action. The attached Resolution of Board of Finance will need to be voted on and included in the minutes of your meeting.

Shawn P. Murphy  
First Selectman

Attachments: Resolution of Board of Selectmen  
Resolution of Board of Finance

2-4



Town of  
*North Stonington, Connecticut*

RESOLUTION OF BOARD OF FINANCE

RESOLVED, that the Board of Finance recommends that the Town of North Stonington increase by \$2,254,000 the \$6,360,000 appropriation approved at referendum held July 29, 2013 for costs related to the design and construction of a new Emergency Services Complex and related improvements to be situated at 25 Rocky Hollow Road in North Stonington, for an aggregate appropriation of \$8,614,000; and that the Town increase by \$2,254,000 the \$6,360,000 authorization of bonds or notes and temporary notes approved at referendum held July 29, 2013 to finance the aforesaid appropriation, for an aggregate borrowing authorization of \$8,614,000. The amount of bonds or notes authorized to be issued to finance the appropriation shall be reduced by the amount of grants received by the Town for the project. The appropriation may be spent for design and construction costs, including administrative costs, architects' fees, engineering fees, testing, survey, printing and advertising costs, equipment, materials, legal and other professional fees, net temporary interest and other financing costs, and other expenses related to the project and the financing thereof.

*Former Resolved That Such Recommendations Be Submitted To A  
Town Meeting To The Town Of North Stonington For Approval*

Approved by the Board of Finance: 2/17/18 with a vote of: 6-0-0

*Tim Mani*

2-5



(2-6)



# NORTH STONINGTON CENTER FOR EMERGENCY SERVICES

Progress Report

02/16/2016



1

# PROJECT HISTORY

Timeline  
Original Budget



# TIMELINE (2008 – 2011)

2008

- NSVFC commissions conceptual design

2009

- NSVFC and NSAA begin joint meetings to refine needs/goals

2010

- Initiated process to secure USDA low interest loan

2011



# TIMELINE (2012 – 2015)

2012

- Town building committee formed
- Building committee develops project cost estimate from historical construction data

2013

- Town meeting to discuss proposal and funding
- \$6.36M approved
- Architect hired
- Building committee works with architect to develop plans

2014

- Plans for Phase 1 complete and sent out to bid
- Phase 1 bid awarded
- Site work begins

2015

- Plans for Phase 2 complete and sent out to bid
- Phase 2 bids received



# PROJECT BUDGET

	Original (Jul 2013)		
1.Soft costs: administrative and legal	\$300,000		
2.Architectural and engineering fees	\$396,360		
3.Project inspection fees	\$60,000		
4.Site work	\$585,000		
5.Building construction	\$4,497,640		
6.Equipment specific to facility start-up	\$283,000		
7. Contingencies	\$238,000		
<b>Total</b>	<b>\$6,360,000</b>		



2

## DESIGN PROCESS

Architect & Building Design  
Cost Saving Measures



# ARCHITECT SELECTION & BUILDING DESIGN

Town approves \$6.36M (July 2013)



Bid package prepared for architectural firm



Selection: Silver/Petrucelli + Associates (S/P+A)

- Initial recommendation: single floor design (cost savings)



Building committee provides detailed space needs to S/P+A

- Committee references 2008 plan; modifies to single floor
- S/P+A provides rough cost estimate to committee based on \$ / sq. ft.
- Estimate is over-budget



# COMMITTEE RESPONSE TO HIGH COST ESTIMATES

## 1. Reduce floor area

- Reduction without impacting operations or future needs
  - Eliminate smaller conference room, incorporate EOC into main meeting hall, consolidate storage
- Able to reduce area by 20%

## 2. Use a pre-engineered structure

- Maintains design flexibility while reducing cost
- Complete shell package as a system reduces cost – eliminates multiple trades
- Ease of maintenance
- Savings: approximately \$500,000 to \$800,000

## 3. Use a simplified exterior design



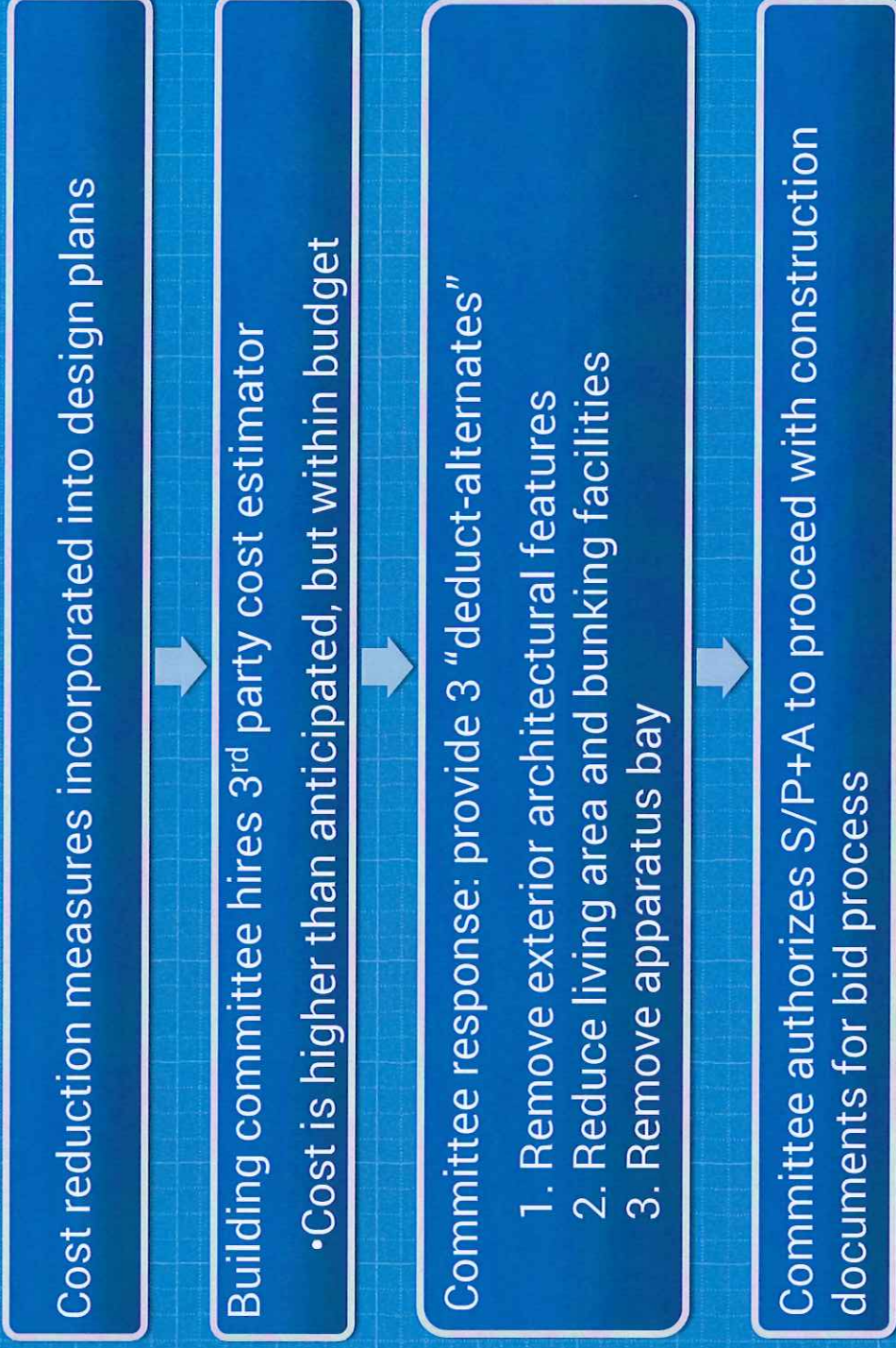
# COMMITTEE RESPONSE TO HIGH COST ESTIMATES

## 4. Separate project into 2 phases

Phase 1 Site Excavation	Phase 2 Building Construction
<ul style="list-style-type: none"><li>• Bid separately from Phase 1</li><li>• Completed 8/2015</li><li>• Allowed Town to act as general contractor → cost savings</li><li>• Provided control over unknown costs such as ledge → cost savings</li><li>• Budget: \$585,000</li><li>• Actual: \$595,474</li></ul>	<ul style="list-style-type: none"><li>• In progress...</li></ul>



# DESIGN DEVELOPMENT – PHASE 2





3

## PHASE 2 BID RESULTS

Bid Results  
Cost Escalation



# PROJECT BUDGET

	Original (Jul 2013)	
1. Soft costs: administrative and legal	\$300,000	
2. Architectural and engineering fees	\$396,360	
3. Project inspection fees	\$60,000	
4. Site work	\$585,000	
5. Building construction	\$4,497,640	~ \$4.5M available for Phase 2
6. Equipment specific to facility start-up	\$283,000	
7. Contingencies	\$238,000	
Total	\$6,360,000	



# PHASE 2 BID RESULTS

- \$4.5M available for Phase 2
- 5 bids received, range \$5.4M to \$6.6M
- Deduct alternates provide less than anticipated savings

Contractor	Base Bid	Deduct 1 (East Canopy)	Deduct 2 (Living Space)	Deduct 3 (Apparatus Bay)
Nutmeg Companies	\$5,440,000	\$28,000	\$58,000	\$90,000
LaRosa Building Group	\$5,691,000	\$62,000	\$46,000	\$129,000
W.J. Mountford Co.	\$5,774,000	\$31,000	\$73,000	\$113,000
Montagno Construction	\$5,805,000	\$44,880	\$85,930	\$169,650
Garsan Construction	\$6,600,000	\$34,800	\$57,840	\$85,187

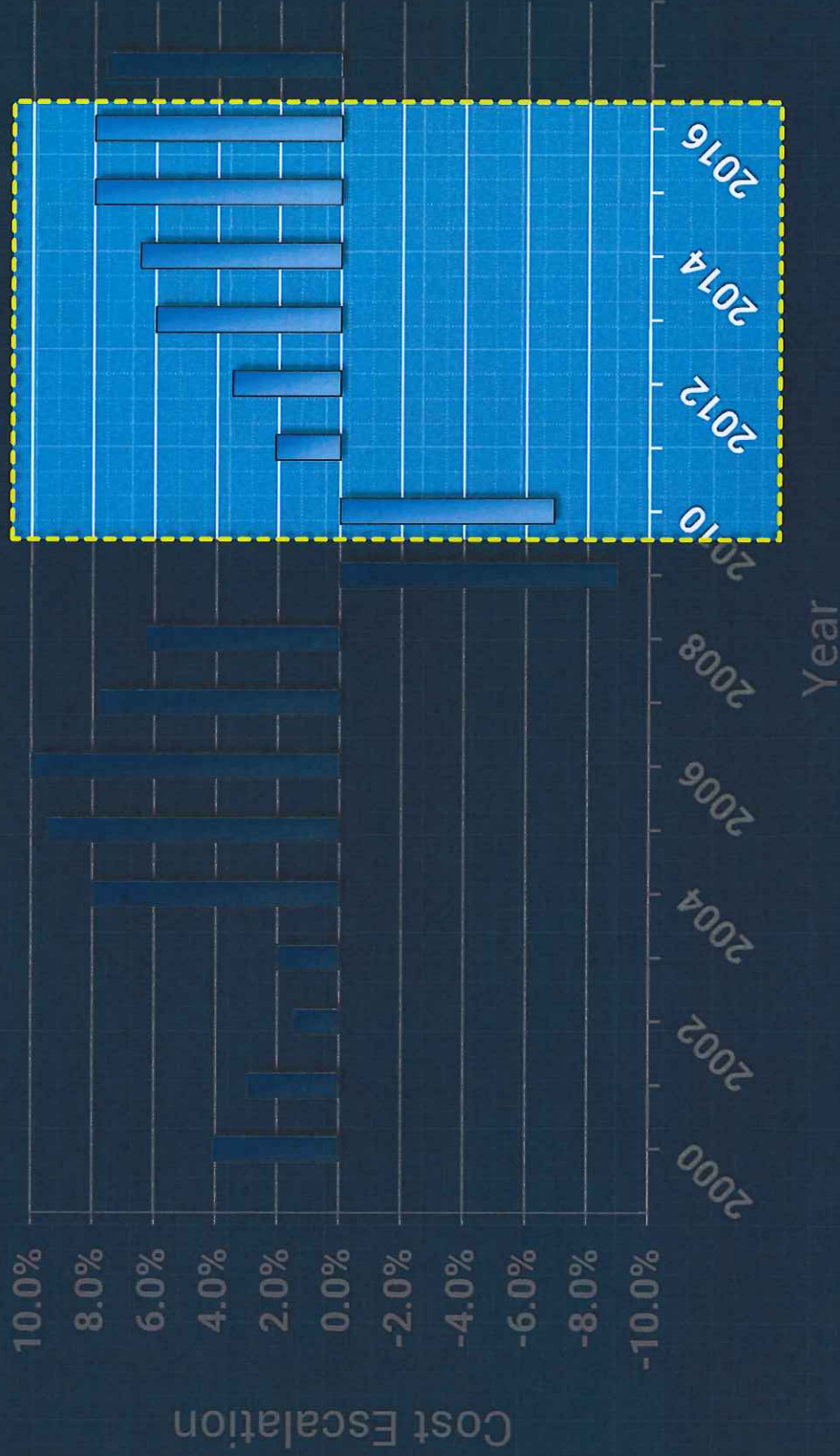


# WHY ARE BIDS OVER BUDGET?

→ Cost escalation and timing

2010 → 2016

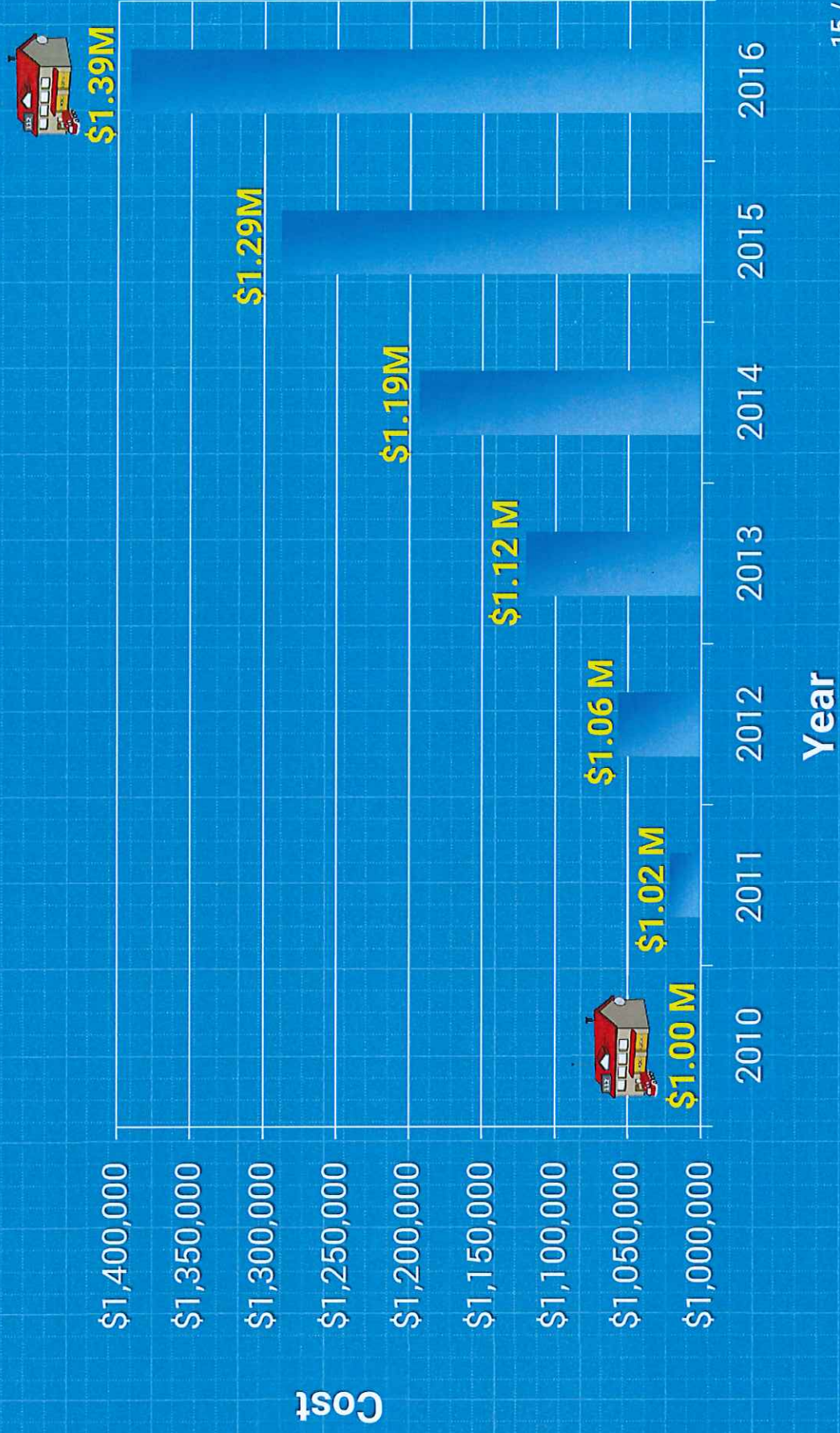
Use \$ instead of %





# WHY ARE BIDS OVER BUDGET?

→ Cost escalation and timing





4

## PROPOSED FACILITY

Key features  
Architectural renderings



# PROPOSED FACILITY

- Space for combined use by fire and ambulance
  - Training, office, supplies storage, living, etc.
- Supports the cross-training of emergency personnel
  - More volunteers, faster response times, better staffing





# PROPOSED FACILITY

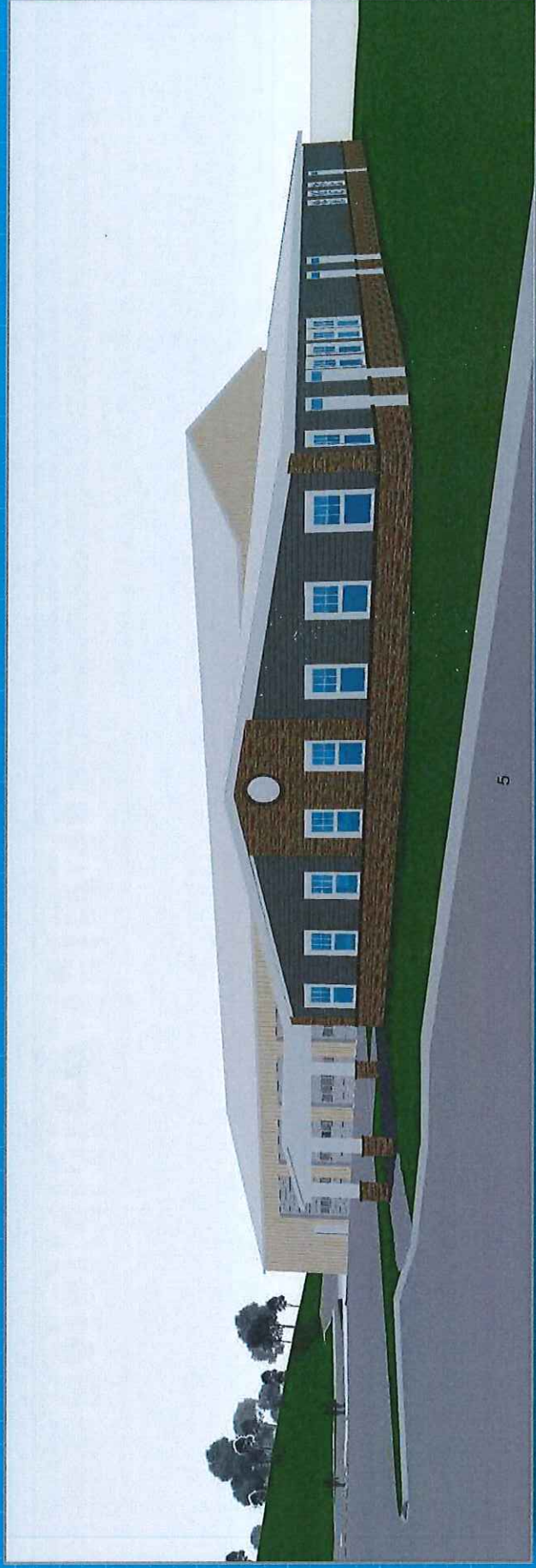
- Solves current issues
  - Lack of space for day-to-day activities
  - Fire apparatus must be specified to fit building
  - New ambulances will not fit in current building
  - Safety concerns: diesel exhaust, attic storage, no safe bunking
  - Inadequate space for training





# PROPOSED FACILITY

- Upgraded architecture
- Most cost effective design
  - Single story, pre-engineered, reduced floor area
- Supports needs of NSVFC and NSAA now and in future





5

## LOOKING AHEAD

Revised cost analysis  
Request for additional funding  
Future dates

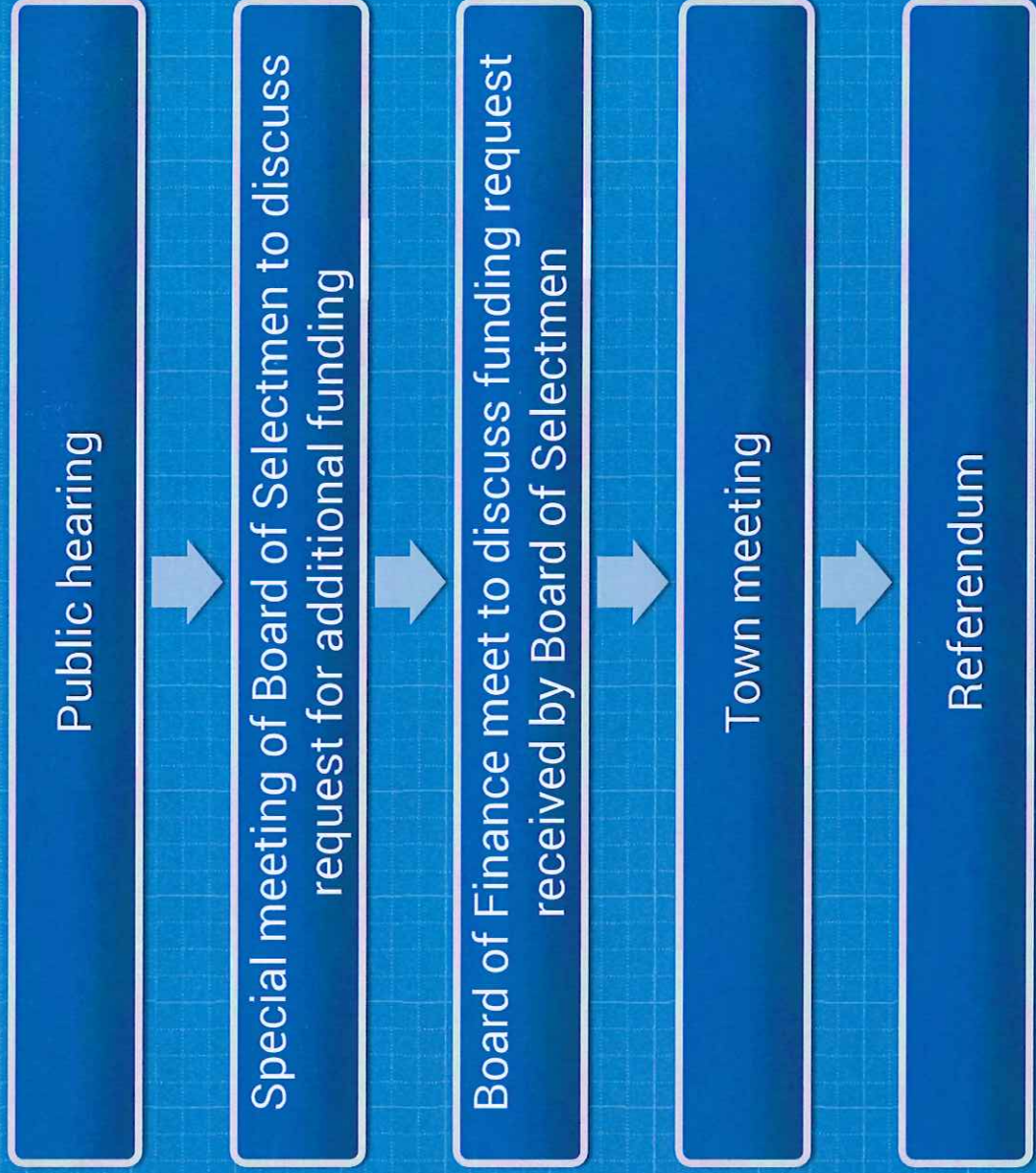


# REVISED COST ANALYSIS

	Original (Jul 2013)	Revised (Dec 2015)	Difference
1.Soft costs: administrative and legal	\$300,000	\$519,014	+\$219,014
2.Architectural and engineering fees	\$396,360	\$332,005	-\$64,355
3.Project inspection fees	\$60,000	\$105,000	+\$45,000
4.Site work	\$585,000	\$598,862	+\$13,862
5.Building construction	\$4,497,640	\$6,298,227	+\$1,800,587
6.Equipment specific to facility start-up	\$283,000	\$286,760	+\$3,760
7. Contingencies	\$238,000	\$474,132	+\$236,132
<b>Total</b>	<b>\$6,360,000</b>	<b>\$8,614,000</b>	<b>+\$2,254,000</b>



# UPCOMING EVENTS





# QUESTIONS?

North Stonington  
Center for Emergency Services



